

## REMARKS

This Amendment and Response amends the claims as they stood after entry of the amendment filed on September 15, 2003. *See* June 21, 2004 Action, ¶ 2. This Amendment and Response amends claims 1, 10, 11, 12, 14, 15, 18, 19, 22, 30, 74, and 82-85 and cancels without prejudice claims 5-9, 23, 24, 28, 29, 47, 49-73, 75-78, 86, and 93-95. With this Amendment and Response, claims 1-4, 10-19, 21, 22, 27, 30, 40-45, 74, 79-85, and 87-92 are pending in this application. No fees are believed due; however, the Commissioner is hereby authorized to charge any deficiency or credit any overpayment to Deposit Account 11-0855.

On February 19, 2004, Applicants' Assignee submitted to the Examiner, but did not file, a proposed Amendment and Response to the December 17, 2003 Action ("Proposed Response"). The June 21, 2004 Action addresses the arguments set forth in the Proposed Response. *See* June 21, 2004 Action, ¶¶ 27-34. Thus, to avoid re-arguing Applicants' Assignee's positions but to ensure that desired arguments made in the Proposed Response become of record in this application, a copy of the Proposed Response is attached hereto as Exhibit A. Applicants' Assignee incorporate herein portions from the *Remarks* section of the Proposed Response as indicated in this Amendment and Response.

### **I. Restriction Requirement**

The June 21, 2004 Action maintains that the application contains claims directed to three patentably distinct inventions – Invention I (directed to carpet tiles, an assembly of tiles, and a floorcovering of tiles); Invention II (drawn to a carpet web); Invention 3 (drawn to a method of making floorcovering and carpet tiles). Applicants' Assignee hereby elects to pursue Invention I in this application. Applicants' Assignee makes this election with traverse, and without prejudice to the presentation of the claims of Inventions II and III in later applications.

For the reasons set forth in Part I of the Proposed Response (incorporated by reference), Applicants' Assignee respectfully submits that restriction in this case is improper and renews its request for withdrawal of the requirement and examination of all of the claims on the merits.

## **II. Amendments to the Drawings**

The Action objects to the drawings as failing to show a floorcovering exhibiting orthogonal ambiguity but suggests submission of new figures to overcome this objection. Accordingly, pursuant to the Action's suggestion, Applicants' Assignee submits new Figures 4 and 5 (attached behind Exhibit B), each illustrating a different randomly oriented arrangement of the tiles of one embodiment of the present invention into a floorcovering. Figures 4 and 5 do not constitute new matter, but merely represent different orientations and positions of the tiles shown in the drawing of the web of Figure 1 that have been reassembled as taught by the specification at page 2, lines 10-19.

## **III. 35 U.S.C. § 112 Claim Rejections**

The Action rejects claims 1-19, 21-24, 27-30, 47, 49-78, 86, and 93-95 under 35 U.S.C. § 112, second paragraph, as being indefinite. The Action also rejects under 35 U.S.C. § 112, first paragraph, claims 47, 86, and 94 for failing to comply with the written description requirement and claims 1-19, 21-24, 27-30, 47, 49-78, 86, and 93-95 for failing to reasonably provide enablement for all orthogonally ambiguous carpet tiles. Claims 5-9, 23, 24, 28, 29, 47, 49-73, 75-78, 86, and 93-95 have been cancelled without prejudice, rendering the § 112 rejection of these claims moot. Thus, only the § 112 rejections pertaining to remaining claims 1-4, 10-19, 21, 22, 27, 30, and 74 are discussed herein.

**A. Claims 1-4, 10-19, 27, 30, and 74**

Claims 1-4, 10-19, 27, 30, and 74 are rejected as failing to “positively recite that [the] tiles are assembled on a flooring surface so that each tile is adjacent to and abutting at least one other tile.” Claim 1 has been amended to recite that the tiles exhibit orthogonal ambiguity “when the tiles are assembled on a flooring surface so that each tile is adjacent to and abuts at least one other tile,” thereby overcoming the Action’s rejection of claim 1 on this basis. Moreover, claim 74 has been amended to depend from amended claim 1. Thus, the Action’s rejection of claim 74 on this basis is also overcome. Finally, claims 2-4, 10-19, 27, and 30 all ultimately depend from amended claim 1. Applicants’ Assignee understands that these claims were rejected solely by virtue of their dependence on rejected independent claim 1, and thus withdrawal of the § 112 rejection on this basis is respectfully requested for all of claims 1-4, 10-19, 27, 30, and 74.

**B. Claim 74**

Claim 74 is rejected as being unclear about whether the phrase “adjacent shapes” refers to the shapes within a single tile or to adjacent shapes on adjacent tiles. Claim 74 has been amended to remove all reference to “adjacent shapes,” and thus Applicant’s Assignee requests withdrawal of this rejection.

**C. Claims 1-4, 10-19, 21, 22, 27, 30, and 74**

The Action rejects claims 1-4, 10-19, 21, 22, 27, 30, and 74 (and other claims now cancelled without prejudice): (1) under §112, second paragraph, as indefinite “for claiming the carpet tiles in terms of a property [orthogonal ambiguity] instead of the structural or chemical features that produce said property and which would distinguish said tiles from other prior art carpet tiles” and (2) under § 112, first paragraph, as failing to enable all orthogonally ambiguous

carpet tiles. Applicants' Assignee incorporates by reference and renews its arguments as set forth in Part III.C. of the Proposed Response and as argued in the February 25, 2004 Interview, which arguments the Examiner considered and addresses in paragraphs 19 and 27-34 of the present Action.

Applicants' Assignee does not agree that these rejections are proper and notes that: (1) this § 112, second paragraph, rejection was not raised until the December 17, 2003 Office Action, when the application had been pending for 34 months and had already been the subject of four prior Office Actions, two in person interviews, and several telephone interviews and (2) this § 112, first paragraph, rejection was not raised until this June 21, 2004 Office action, when the application had been pending for 40 months and had already been the subject of five prior Office Actions, two in person interviews, and several telephone interviews. While Applicants' Assignee and the undersigned attorney sincerely appreciate the diligence and courtesies of Examiner Juska and her supervisors in handling this application, the delay incurred in prosecution of this application by the piecemeal presentation of objections and rejections continues to be extremely detrimental to Applicants' Assignee. Accordingly, solely to expedite issuance of a patent from this application and without admitting the validity of any rejections and without prejudice to presentation of any claims in any application claiming priority to this application or any other applications, Applicants' Assignee has amended independent claim 1 in accordance with the Examiner's suggestion that "applicant amend the claims to include subject matter from the specification, page 4, line 4-bottom of page 5, which discusses the factors and rules for creating an orthogonally ambiguous pattern for carpet tiles." June 21, 2004 Action, ¶ 34. Claim 1 has been amended to include the "factors and rules" the Examiner identifies from the application. Applicants' Assignee believes that amended claim 1 therefore overcomes all of

the Action's § 112, first and second paragraph, rejections and requests withdrawal of those rejections with respect to claim 1, as well as claims 2-4, 10-19, 21, 22, 27, 30, and 74 which all depend from claim 1.

Because § 112, first and second paragraphs, are the only bases of rejection for claims 1-4, 10-19, 21, 22, 27, and 30, and at least as a result of these amendments all of the § 112 rejections have been addressed and overcome, these claims are allowable, and Applicants' Assignee and its attorneys earnestly request that they be allowed.

#### **IV. 35 U.S.C. § 102 Claim Rejections**

The Action rejects claims 49-52, 54-59, 61-64, 75, 82-86, 93 and 95 under 35 U.S.C. § 102 as being anticipated by Eusemann. Claims 49-52, 54-59, 61-64, 75, 86, 93 and 95 (which are all of the claims rejected under § 102 except claims 82-85) have been cancelled without prejudice, rendering the Action's rejection of these claims moot. Moreover, claim 82 (from which claims 83-85 now depend) has been rewritten in independent form to incorporate the subject matter of claim 79 (from which it depended before amendment). Claim 82 now recites carpet tiles cut from a web so that each tile has a textile face with portions of at least some of the plurality of shapes found on the carpet web. Claim 82 also recites that when such tiles are assembled on a flooring surface so that each tile is adjacent to and abuts at least one other tile, the tiles exhibit orthogonal ambiguity without alignment of shapes between adjacent tiles. As Applicants' Assignee has observed repeatedly during prosecution of this application, Eusemann teaches only carpet tiles having shapes and patterns that are designed to align with adjacent and abutting tiles. The Examiner has acknowledged that such amendments would overcome the § 102 rejection. *See* Summary of February 25, 2004 Interview. Because Eusemann fails to anticipate claim 82, claim 82, as well as claims 83-85 which depend from claim 82, are

allowable. Applicants' Assignee respectfully requests withdrawal of this rejection and allowance of claims 82-85.

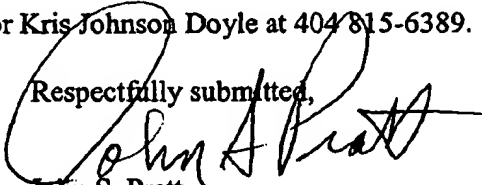
**V. 35 U.S.C. § 103 Claim Rejections**

The Action rejects claims 53, 60, 65-74, and 76-78 under 35 U.S.C. § 103 as being unpatentable over Eusemann. Claims 53, 60, 65-73, and 76-78 (which are all of the claims rejected under § 103 except claim 74) have been cancelled without prejudice, rendering the Action's rejection of these claims moot. Claim 74 has been amended to ultimately depend from allowable claim 1. The Examiner has acknowledged that such amendments would overcome the § 103 rejection. *See Summary of February 25, 2004 Interview.* Claim 74 is therefore allowable at least by virtue of its dependency from allowable claim 1, and Applicants' Assignee respectfully requests withdrawal of this rejection and allowance of claim 74.

**CONCLUSION**

Applicant's Assignee respectfully submits that claims 1-4, 10-19, 21, 22, 27, 30, 74, and 82-85 are in condition for immediate allowance, and requests early notification of their allowance. If there are any matters that can be addressed by telephone, the Examiner is urged to contact the undersigned at 404 815-6367 or Kris Johnson Doyle at 404 815-6389.

Respectfully submitted,

  
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